



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# THE CONFLICTING DUTIES OF THE INTER-STATE COMMERCE COMMISSION.

BY H. T. NEWCOMB.

---

JAMES MADISON, writing in the forty-seventh number of "The Federalist," in defence of the proposed Federal Constitution against the objection, made by its "more respectable adversaries,"\* that it failed sufficiently to separate the legislative, executive and judicial powers of Government, said:

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny."

Continuing the discussion in the succeeding number, which, however, was published in the same issue of the "New York Packet," Madison, in the final paragraph, gave utterance to the following warning:

"The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of Government in the same hands."

In other words, it appeared to the learned, patriotic and practical commentator that the wisest and most skilfully drawn constitutional provision might be subverted in substance should the people relax their vigilance or waver in their fidelity to the principle of separation of powers. There is abundant evidence that the warning was not unnecessary.

The Interstate Commerce law, adopted on February 4th, 1887; amended on March 2nd, 1889, February 10th, 1891, February 11th, 1893, February 8th, 1895, February 11th, 1903, and February 19th, 1903, and revised on June 29th, 1906, has frequent-

\* "The Federalist," No. XLVII. Originally published in the "New York Packet," Friday, February 1st, 1788.

ly been used as an illustration of the confusion of different kinds of power in the same hands. Indeed, if statements that have seemingly emanated from authoritative sources are to be regarded as trustworthy, the great constitutionalist and lawyer who now occupies the White House is so far convinced of the validity of this criticism that he has set before himself the task of obtaining a distribution of the inharmonious and conflicting powers. Evidently President Taft intends that there shall be no diminution of the safeguards against excessive and unjustly discriminatory charges for interstate railway services, but he proposes to place in separate hands the different means provided for the protection of the public against those undoubted evils, to the end that each agency may be able to use its own sort of power in the most impartial, satisfactory and effective manner.

The Interstate Commerce Commission consists of seven members, appointed by the President, subject to confirmation by the Senate, for terms of seven years' duration and expiring at intervals of one year, who are paid for their services at the rate of ten thousand dollars per annum. Its principal office is in Washington, D. C., but it pursues its investigations wherever it will facilitate the prompt and efficacious performance of its functions. It expends upwards of \$700,000 yearly, and its salary-list and other expenses are rapidly increasing.

The principal powers and duties conferred upon the Commission by the different sections of the law in its present form are enumerated below:\*

"Section 1. A. (1). To order the construction, maintenance and operation upon reasonable terms of switch connections between any railway and any lateral branch line of railroad or private sidetrack where safe, reasonably practicable, and there is sufficient business.

"Section 6. A. (2). To modify the requirements of the law as to length of notice of changes in rates or as to publishing, posting and filing rate schedules or tariffs.

B. (3). To execute and enforce the law.

C. (4). To apply to district attorneys of the United States to institute and prosecute proceedings for the enforcement of the law.

\* For convenience in referring to them hereinafter, each separate power has been given a serial number which appears in parenthesis.

- D. (5). To issue subpoenas and subpoenas *duces tecum*.
  - E. (6). To order testimony taken by deposition for use before itself.
  - F. (7). To appoint persons to take depositions in foreign countries for use before itself.
- "Section 13. A. (8). To receive complaints and to investigate matters made the subject of complaint.
- B. (9). To institute inquiries 'on its own motion' and 'to the same effect as though complaint had been made.'
- "Section 14. A. (10). To make written reports of its investigations.
- B. (11). To include in its reports of investigations its 'decision, order or requirement in the premises,' and, if it awards damages, its 'findings of fact.'
- "Section 15. A. (12). 'To determine and prescribe,' after 'full hearing,' 'what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed and shall conform to the regulation or practice so prescribed.'
- B. (13). To prescribe, within certain limits, when its orders shall take effect and how long they shall remain in force.
  - C. (14). To prescribe divisions of joint rates.
  - D. (15). To establish through routes and fix joint maximum rates and divisions of rates on such routes.
  - E. (16). To prescribe maximum allowances for services connected with transportation performed by owners of the goods transported.
- "Sections 16 and 16a. A. (17). To make orders directing the payment of money damages.
- B. (18). To suspend, reverse or modify its own orders.
  - C. (19). To employ special counsel 'in any proceeding' under the law.
  - D. (20). To apply to the Federal courts to compel obedience to its orders.

- E. (21). To defend suits brought 'to enjoin, set aside, annul or suspend' any of its orders.
- "Section 17. A. (22). To make and alter its own rules of practice.
- "Section 19. A. (23). To prosecute anywhere, by one or any number of its members, 'any inquiry necessary to its duties.'
- "Section 20. A. (24). To require annual reports from carriers subject to the law.
- B. (25). To prescribe the form of such reports, and to require specific answers in them to 'all questions' on which it 'may need information.'
- C. (26). To fix a date after which all carriers subject to the law must have 'as near as may be' a uniform system of accounts and the manner in which such accounts shall be kept.
- D. (27). To require special monthly reports of earnings and expenses.
- E. (28). To prescribe the forms of 'all accounts, records and memoranda' of traffic movement and receipts and expenditures of money permitted to be kept by the carriers.
- F. (29). To have constant access to and to inspect the accounts of carriers.
- "Section 21. A. (30). To report annually to Congress and to make 'recommendations as to additional legislation.'"

By certain supplementary Acts the Commission is also given extensive powers for the enforcement of the safety-appliance and hours-of-service laws, collects data covering accidents and has a degree of supervision over some telegraph companies.

Here is certainly a curious hodgepodge of conflicting, incongruous and irreconcilable functions. The bare enumeration should suffice to establish the truth that the Commission has been directed to perform many duties which it cannot execute with proper zeal without, at the same time by an inevitable reaction, depriving itself of that just equipoise which ought to characterize the exercise of legislative functions and, *a fortiori*, of that cold impartiality that constitutes the only judicial temper which is proper and safe. The impropriety of this union in the same agency of inconsistent powers is vouched for by no less an authority than Hon. Charles A. Prouty, since the year 1896 one of the most active and prominent members of the Commission. Addressing the American Bar Association at its annual

convention, held during August, 1907, fourteen months after the passage of the Hepburn law, Mr. Prouty said:

"I have said that the Act to regulate Commerce at once instructs the Commission to enforce its provisions, and constitutes that body a tribunal to pass upon complaints brought against railways. It has been in the past one of the most serious reproaches against that Act that the Commission was made by its terms at once a prosecuting officer and judge . . . the objection to combining in the same person the duties of prosecutor and a trier is a wise one, which should seldom be contravened. . . . The jurisdiction of the Commission has been enormously increased. . . . I feel, therefore, that *the time has come when the duties of this body should be separated. If it is to continue to hear and determine cases, it should be relieved of its other work. . . .*

"The conclusion of the whole matter is this: If the Interstate Commerce Commission is vested with a jurisdiction so tremendous in extent, and of such finality, every effort should be made to provide a body adequate to the trust. That Commission under the present law is charged with two sets of duties requiring diverse qualifications for their discharge. It stands, first, as representative of the Government to see that these highways are in fact public. It is commanded to enforce the provisions of the Act to regulate commerce. It must see that rates are reasonable and just; that the practices and regulations of railways are not oppressive; that the penalties provided by the Act are enforced. In the near future the powers must be extended to the operation of the railroad as well. *These duties are largely executive. They can best be discharged by a single head, responsible to the executive and answerable to the spur of popular criticism.*

"Second, this Commission is in essence a judicial tribunal which hears and decides complaints. *The qualifications of such a body are the exact opposite of the other. . . .*

"I very much doubt whether the same body can properly discharge both these functions. In the end it will either become remiss in its executive duties or will, in the zeal of those, become unfit for the dispassionate performance of its judicial functions. *Whatever may have been true in the past, the time has come when the Commission should be relieved of all its duties, except the hearing and deciding of complaints.\**

Portions of the foregoing, expressing important conclusions, have been italicized by the writer of the present paper. It is difficult to see any escape from acquiescence in these conclusions. The public is plainly entitled to an impartial forum in which the

\* Commissioner Prouty's paper, which is entitled "A Fundamental Defect in the Act to Regulate Commerce," is printed in full in the Transactions of the Thirtieth (1907) Annual Meeting of the American Bar Association and has been privately printed in pamphlet form by its author.

relative rights of the buyers and sellers of interstate railway services may be determined, and it is only too plain that perfect impartiality cannot long survive in the unfavorable atmosphere of prosecution. When a member of the Commission who has had such long experience in its work comes forward publicly to declare in unequivocal terms that it cannot continue to exercise its executive duties and remain "a body adequate to the trust" of its "tremendous jurisdiction" to hear complaints and redress transportation wrongs, it is clear that the necessity for a change is imperative.

The characteristic functions of the Commission are those of hearing complaints and redressing wrongs by means of orders requiring changes in rates or in transportation practices. It was created primarily for these purposes and the form of its organization was adapted, in the opinion of those who framed the statute, especially for the performance of these functions. Subject to the single qualification that, with duties so strongly partaking of the judicial nature, there ought to go the constitutional judicial tenure of office—that is to say, that appointments to the Commission ought to continue "during good behavior"—there could be little objection to the statement that, deprived of inconsistent duties, the performance of which must necessarily warp its judgment and create a bias toward one of the parties to each proceeding, the Commission is well constituted to arbitrate between the carriers' patrons and the carriers. Therefore, whatever duties are to be subtracted from those now performed by the Commission, those of hearing and deciding complaints ought to remain. Commissioner Prouty thinks that no other duties ought to be left to the Commission, and it may be admitted that he is unmistakably right in this conclusion. The powers and duties which would probably be retained by the Commission, if Commissioner Prouty's recommendation should be followed, are those numbered 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 22. All these powers and duties relate to the receipt and adjudication of complaints, to the procurement of testimony necessary therefor or to the redress of wrongs complained against and shown by testimony to exist. For the proper performance of such duties an unbiased and impartial tribunal is necessary, and with the curtailment of its duties the Commission can be expected to become such a tribunal.

There is, however, another reason for the adoption of Commissioner Prouty's suggestion which ought to have controlling influence, even though there were no other serious objections to the Commission continuing to perform its supplementary duties as a prosecuting agency. The number of complaints formally presented for adjudication has enormously increased since the enactment of the Hepburn law. Promptness in handling these cases is a primary requisite of sound and helpful regulation, and care and thoroughness in consideration are among the chief essentials. How difficult it must be invariably to comply with these requirements, even were the Commission wholly free from its multitudinous and exacting executive duties, may be gathered from the following quotation from the latest (1908) annual report of that body:

"The number of formal cases and investigations instituted during the year was 554, relating directly to the rates and practices of 3,080 defendants. This shows an increase of thirty-three and one-half per cent. over the previous year, as the number of such complaints filed in 1907 was 415, relating directly to the rates and practices of 2,236 defendants. . . .

"Five hundred and seventy-three hearings and investigations of alleged violations of the Act to regulate commerce, including one investigation under joint resolution of the Congress, have been had at general sessions of the Commission at its office in Washington and at special sessions held at various places throughout the country at which more than 67,000 pages of testimony were taken or something over 134,000 folios."\*

From the organization of the Commission to the date of the passage of the Hepburn law—that is, from early in 1887 to June 29th, 1906, a period of more than nineteen years,—the number of formal complaints received was less than 874, that number representing all proceedings begun, including some that were instituted by the Commission "on its own motion," without any formal complaint. From June 30th, 1906, to November 24th, 1908, formal proceedings were begun in 1,031 cases, nearly all by the receipt of complaints. Thus during twenty-nine months, under the new law the Commission received substantially 157, or about eighteen per cent., more complaints than it did in over nineteen years under the old law, the average number received under the new law being over thirty-five cases per

\* Twenty-second (1908) Annual Report of the Interstate Commerce Commission, pp. 6, 7.



month as compared with less than four cases per month under the old law.

Now as to the rapidity with which it has proved practicable to handle these cases. On June 28th, 1909, the Interstate Commerce Commission decided case No. 1,597 which appears to have been filed on June 12th, 1908, substantially one year before. The opinion is the one-thousandth and sixtieth promulgated and the last issued during the fiscal year that ended with June 30th, 1909. The first opinion rendered during that year was No. 699, so that it appears that in twelve months the Commission issued 362 opinions. Some of these opinions covered more than one case, a fact that must be taken into consideration before comparing the total just given with the number of complaints received. There were two instances of the consolidation of seven cases; one opinion covered six complaints, three covered five, one covered four, six covered three and twenty covered two; the others covered one each. Allowing for these, the total number of complaints decided during the fiscal year was 426, which may no doubt be fairly compared with 554 complaints received during the calendar year 1908. Among the cases decided during May and June of this year, months of quite unprecedented activity in the promulgation of decisions, there were forty-five at least (the examination may not have been complete) which had been pending over nine months, thirty-eight over ten months, thirty-four over eleven months, thirty-two over twelve months, nineteen over fifteen months, thirteen over eighteen months, twelve over twenty-one months and six over two years. The average time which elapsed between the filing of these complaints and their decision was one year, three months and twelve days.

The record just summarized contrasts, almost inexplicably, in its evidence of expedition in disposing of cases with the much slower progress of the years immediately preceding. For example, the annual report for 1907 states that:

"Between August 28th, 1906, and November 4th, 1907, the Commission rendered decisions, after full hearing upon complaint and answer, in 107 contested cases."\*

As the annual reports show that the number of formal com-

\* Twenty-first Annual Report of the Interstate Commerce Commission, p. 7. The average for the period was 7.5 cases per month; cases filed in the same period averaged thirty-one per month.

plaints filed between the dates named in the foregoing was 441, it is clear that the relatively small number decided (less than one-fourth of the number received) cannot be explained as due to any lack of cases to be decided. There was no change in the personnel of the Commission during the periods under comparison, and of course it is impossible to suggest that there has at any time been anything except the most diligent devotion to duty on the part of every member of that body. The only possible conclusion, therefore, from the contrast between 107 cases decided in one period of fourteen months and 426 cases decided in a later period of twelve months is that the Commission has altered its view as to the quantity of effort necessary or desirable in the consideration of separate cases. Whether the reduced consideration which such an altered attitude would imply is sufficient to safeguard the reciprocal interests of railway patrons and railway investors is a question of great importance.

Whatever conclusion may be warranted as to the adequacy of the inquiry made in each particular case under current conditions, there can be no doubt that the capacity of a board of seven of the most intellectually active and physically able men who could be obtained might well be severely taxed if it performed no duties beyond hearing and deciding interstate commerce cases at the average rate of three for every two days, including Sundays and holidays and with no allowance for vacations from one year's end to another. And that is the rate at which these cases were placed upon the docket of the Commission during 1908.

The duties now superimposed upon those properly belonging to the Commission are varied, extensive and important. Some idea of their nature has already been afforded by an analysis of the law. It is worth while to ascertain from the Commission itself what they amount to in actual practice. The annual report for 1908 gives a hurried synopsis of one very useful activity as follows:

"During the present year 4,640 informal complaints were filed with the Commission in which correspondence has been had with the carriers, resulting in the adjustment of 3,515 of these complaints; 37 were transferred to the formal complaint docket, leaving 1,288 unadjusted in which further correspondence is necessary. During the previous year 4,382 complaints of this character were filed. . . . Many of these complaints are important and allege violations of every phase of the law, such as overcharges, excessive rates, discrimination, reconsignment rules, de-

murrage rules, validation of tickets, train service, car shortage, undercharge, Pullman rates, embargo, etc.”\*

The extent of the correspondence relating to safety-appliance matters, the hours-of-service law, cases pending in the courts, contested cases and general topics indicates another phase of the non-judicial labor of which the Commission might well be relieved. The report for 1908 states that 102,759 such letters were prepared and mailed by the Commission’s “operating division” during that year as against 66,070 the year before, while the number of such letters received was 104,034, an increase from 66,933 in the former year.

The Commission has a “Division of Claims” charged with the duty of investigating claims for reparation on account of alleged overcharges for railway services. In the twelve months covered by the report, this division approved “informal” claims of this sort in 1,012 instances, representing refunds by carriers aggregating \$154,703, and rejected or refused to approve 864 such claims.†

The tariff files maintained by the Commission since 1887 are extensive and require a considerable force of experts and clerks in order that they may be readily available. The Commission is also compelled to prescribe rules to govern the form in which the tariffs or rate schedules are to be prepared. The latest annual report says:

“All schedules offered for filing are scrutinized as to certain features, and gradually more and more are being subjected to careful examination and criticism by the Commission. . . .

“In the twelve months ended November 30th, 1908, there were filed with the Commission 228,490 tariff publications all containing changes in rates and rules governing transportation. A very extensive correspondence has been necessary in connection with this tariff work, which, it is hoped, will in the future become less voluminous.”‡

The statistical work in charge of the Commission requires the services of a large force of employees and must make heavy demands upon the energies of some of the commissioners. The scope of this work is only suggested by the following extract from the report:

\* Twenty-second (1908) Annual Report of the Interstate Commerce Commission, p. 7.

† *Ibid.*, p. 10.

‡ *Ibid.*, p. 14.

"The financial accounts for all agencies of transportation have been brought to a point at which general questions of public policy, as well as technical questions of accounting, claim consideration. . . .

"In the matter of annual reports, also, many changes have been made during the past year. Such reports are now required from express companies, from electric railways and from sleeping-car companies. The forms for reports of steam railways have been arranged so as to require a less extended report from the small railways than from the large railways. A special form of report has been devised for switching and terminal companies, as well as for lesser companies, which maintain financial accounts only. A special form of report has been provided also for the use of carriers engaged in operations other than rail transportation."\*

Possibly the duties in addition to hearing and determining complaints that have so far been discussed in this article have little, if any, tendency to create that attitude toward the carriers which, as so aptly and forcibly stated by Commissioner Prouty, tends to impair the judicial quality and temper of the Commission. If so, the only, though sufficient, reasons for transferring these duties are that, as Mr. Prouty says, they can be better performed under a single executive head, and that their transfer will allow the Commission to devote all of its time and abilities to the determination of the many grave and far-reaching questions presented by the complaints it receives.

There are other duties, however, which cannot be described as harmless in their tendencies to react upon the feeling of the Commission toward the corporate parties who must defend their rates and practices when they are attacked by complaints. In enforcing by prosecutions the hours-of-service and safety-appliance laws, in participating in the defence of suits brought in the Federal Circuit Courts to annul or suspend its orders, in inspiring and assisting the prosecution of persons and corporations accused of violating the law, the Commission is no longer an impartial body, it has become an active agent in a process openly adverse to some of the very parties over whom it may the next day sit as judge. If this situation had not too long existed, it might well be characterized as intolerable.

Five pages of the 1908 report are devoted to a synopsis of suits brought to annul or suspend the Commission's orders, and it appears that from July 1st, 1908, to December 24th, 1908, the

\* Twenty-second Annual Report of the Interstate Commerce Commission, p. 82.

date of the report, sixteen suits of that character were begun in the Federal courts. The questions presented by these cases include: (a) the constitutionality of the Hepburn law, (b) the limits upon Congressional authority to delegate power to the executive branch of the Federal Government and (c) the extent of the power of judicial review of the Commission's orders and proceedings under the new law. The position of the Commission in assuming a part of the burden of defending these suits is much like that of a Federal circuit judge who should appear in the Supreme Court (without compensation) as the advocate of the party to whose advantage he had decided the same case in his own court. Nevertheless, this strange duty is imposed by the present law upon the Commission.

As to criminal prosecutions initiated by the Commission the report will be briefly quoted:

"The enforcement of the Act by means of criminal prosecution still continues to be necessary. This work has gone forward satisfactorily during the past year. Since December 1st, 1907, forty-six indictments for giving or receiving rebates were returned in the various judicial districts of the country. In the same period forty-one prosecutions were concluded—twenty-four by convictions or pleas of guilty in the trial courts, seven by affirmances of convictions upon appeal, three by acquittal, one by quashing of indictment by the Court of Appeals after conviction in the trial court, and six by entry of *nolle prosequi* before trial.

"The Division of Prosecutions has also investigated many practices of carriers during the year which have been held not to be of sufficient gravity for prosecutions, but which, being of doubtful propriety, have been required to be corrected or discontinued."\*

Concerning its energetic pursuit of possible offenders against the safety-appliance laws, the Commission has much to say.

"Prosecutions under the safety-appliance Act are being vigorously pursued, and each decision tends the more strongly to fortify the efforts of the Commission in its enforcement."†

Some measure of the activity for which the Commission commends itself is found in the fact, recited on the same page, that since the enactment of the law it has sent to the several district attorneys no less than 597 of these cases, representing 2,395 separate violations or alleged violations of the laws, and that on

\* Twenty-second Annual Report of the Interstate Commerce Commission, p. 25.

† *Ibid.*, p. 44.

account of these offences penalties amounting to more than \$100,000 have been recovered. At the date of the report criminal prosecutions in connection with 675 alleged violations were pending. For the detection of offences under this law the Commission employs a large force of "inspectors," although it seems to have held that to ascertain whether the hours-of-service law was properly observed "through secret investigations of Government inspectors" would not have been "in consonance with American ideas and institutions."\* Otherwise the relation of the Commission to the enforcement of the latter statute is the same as toward the safety-appliance law.

That Commissioner Prouty did not overstate the danger when he expressed his fear that "in the zeal" of its executive duties the Commission might "become unfit for the dispassionate performance of its judicial functions" must be plain when we find that body grouping all the possible respondents to the complaints it may receive and applying to them one sweeping and general condemnation. Thus, in discussing controversies that have arisen over the application of the safety-appliance law, the report already quoted says:

"The railroads, however, are inclined to lay much stress upon the sanctity of property interests. They contend that the safety-appliance Act is penal in its nature, and that it should for that reason be strictly construed. They seek to justify their violations of the law by pleading ignorance as to the condition of their equipment or want of intention on their part to disobey the statute."†

It will be noted that the foregoing allegation is confined to no particular railway or group of railways; it characterizes all of them together as lawbreakers and as engaged in an attempt to prevent the successful and complete enforcement of a statute which the Commission very clearly would like to have most broadly construed.

Those who agree that the non-judicial functions of the Commission ought to be transferred need have no very great difficulty over their distribution. An expansion of the force and work of two of the great executive departments of the Federal Government, which would leave all their duties still strictly within the

\* Twenty-second Annual Report of the Interstate Commerce Commission, p. 50.

† *Ibid.*, pp. 38, 39.

scope of the purposes for which they exist, would provide properly for the execution of every such duty.

An excessive or an unjustly discriminatory charge for an interstate railway service amounts, in fact and in law, to an offence against the American public, and the Federal Government ought to provide for the prosecution of this class of wilful infractions of the law of the land, as it provides for the prosecution of other classes. Prosecutions looking toward the exaction of penalties for such violations of law, and the future enforcement of just and reasonable rates and rates not unfairly discriminatory among themselves ought to be instituted by the proper Federal authorities whenever there is reasonable ground for belief that unjust exactions or unjustly discriminatory rates are being enforced for any interstate railway service. Private prosecution should be necessary only when the purpose of the suit is to obtain an award of pecuniary damages for an infraction of the statute. The Department of Justice, with its complete and far-reaching organization under the control of the Attorney-General of the United States and represented in every section of the country by experienced and able attorneys, is obviously the proper department to initiate and prosecute both civil and criminal suits to prevent and punish offences against the laws of the United States. It might very properly be authorized to prosecute before the Interstate Commerce Commission complaints for which probable cause seemed to exist, whenever the private interest was inadequate to lead to complete presentation. Of course this department is that which ought to have the entire burden of prosecuting those charged with rebating or with violating the safety-appliance or hours-of-service laws. The duties and powers numbered 3, 4, 19, 20, 21 and possibly number 30 would thus be transferred to the Department of Justice as well as all duties in the enforcement of the supplementary laws referred to.

Whether the Bureau of Corporations shall remain a part of the Department of Commerce and Labor, as at present, or more consistently, perhaps, with the organization of both departments, shall be made a bureau in the Department of Justice, the propriety of utilizing it as the agency for performing the statistical work, for conducting the non-judicial investigations concerning interstate railway commerce and for exercising the actually administrative powers incident to their necessary regulation, is ap-

parent. The Bureau of Corporations exists to collect data relating to the operations of corporations engaged in interstate commerce and to supply the executive and legislative branches of Government with information believed to illuminate the great problems which have arisen, and will hereafter arise, in the development of modern business methods. It has collected and compiled a great deal of information that has been used, during recent years, as the basis of prosecutions under the Sherman anti-trust law and the Cullom and Hepburn laws for the regulation of railways. But it has never reached its highest potential utility, because its normal and proper field was originally restricted, so as to avoid curtailing the functions of the Interstate Commerce Commission, by excluding from its field of activity the most important of all interstate corporations—that is to say, those owning and operating interstate railways. To add to the functions of the Bureau of Corporations those powers herein designated by numbers 2, 10, 24, 25, 26, 27, 28, 29 and 30 would improve the work both of the agency from which those duties were taken and of that to which they were transferred. The field of the Bureau of Corporations would then, for the first time in its history, be complete and symmetrical; the functions of the Commission would be harmonious and its temper would eventually become judicial.

Such is, in outline, the simple and effective plan which it is hoped will appeal to the good sense and practical judgment of Congress as forcibly as it has evidently appealed to Commissioner Prouty, to the President's most qualified advisers and to the President. It involves no impairment at any point of the proper work of railway or corporate regulation; it proposes no reduction in effectiveness; but, on the contrary, it would strengthen the whole scheme of regulation by making consistent with itself the work of every agency utilized, and by removing the potential or positive bias which has always weakened the confidence of the general public in the judicial impartiality of the Commission.

H. T. NEWCOMB.